IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 9380 of 1997

Between:

A.Surya Kuamri W/o.Late A.V.Ramanujam
Veeravasaram,W.G.Dist Presently Residing at H.No.3-48,Lankala
Koderu Palakollu Mandal,

West Godavari District.

... PETITIONER

AND

1. State of A.P Rep. by its Secretary,

   Education Department,Secretariat Buildings

   Hyderabad.
2. Commissioner of Collegiate Education
   A.P Hyderabad.
3. Regional Joint Director for Higher Education
   Rajahmundry East Godavari District.
4. Accountant General (A&E) A.P, Hyderabad-500463
5. SMBTAV & SN Degree College,

   Rep.by its Secretary and Correspondent,
   Veeravasaram West Godavari District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction especially one in the nature of Mandamus: 1) declaring the inaction of the respondents in not paying family pension and pensionary benefits even 10 years after the demise of petitioners husband as illegal, arbitrary and offends Art.14,16 and 21 of the Constitution of India; 2) direct the respondents to pay family pension and pensionary benefits to the petitioner by treating the entire service rendered by the petitioners husband from 29-07-1960 to 15-04-1987 and pay interest on the amounts due @ 18% annum; and 3) to grant such other relief and reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.JOGAYYA SARMA

Counsel for the Respondents 1 to 3 : G.P.FOR HIGHER EDUCATION Counsel for the Respondent NO.4: STANDING COUNSEL FOR CENTRAL GOVERNMENT Counsel for Respondent No.5: MR.BATHULA VENKATESWARA RAO

The Court made the following :

ORAL ORDER:

This writ petition is filed by the petitioner seeking a writ of mandamus declaring the inaction of the respondents in not paying the family pension and pensionary benefits even after ten years of demise of the petitioner's husband, as illegal and arbitrary, and with a consequential direction to the respondents to pay the family pension and pensionary benefits to the petitioner, by treating the entire service rendered by the petitioner's husband from 29.07.1960 to 15.04.1987, and pay the benefits with interest.

2. According to the petitioner, her husband Dr.A.V.Ramanujam worked as lecturer in DNR College, Bhimavaram, from 29.07.1960 to 1972. He worked as head of the Department of Economics from the academic year 1973 to 1975-76. During the academic years 1972-73 and 1973-74, he also worked as part-time lecturer in the Department of Economics, Post-Graduate Course. From 1.12.1976 to 12.07.1981, he worked as full-time lecturer in the Department of Economics, Post-Graduate Course. On 8.05.1982, he requested the Principal, DNR College, Bhimavaram, to issue service certificate, enabling him to submit the same in connection with the interview for the post of Principal in SMBTAV & SN Degree College, Veeravasaram. He was selected and appointed as Principal and worked in the said college from 9.05.1982 to 15.04.1987. While in service as Principal of the said college, he expired. It is stated that the petitioner and her husband have got two sons and a daughter, who are the legal heirs of her husband along with her, and the children of the petitioner gave consent that they will have no objection, enabling the petitioner to receive the pensionary benefits. It is stated that the petitioner addressed a letter to the Regional Joint Director of Higher Education, Rajahmundry, to issue No Allegation Certificate in respect of her husband, enabling her to submit pension papers, and accordingly obtained the said certificate from him. Thereafter, the petitioner submitted family pension papers along with the service register on 22.10.1996 to the Principal, Secretary and Correspondent, SMBTAV & SN Degree College, Veeravasaram, East Godavari District. The said papers were forwarded by

the said college to the Commissioner of Collegiate Education, Hyderabad on 14.11.1996. The Commissioner in turn directed the office of the Accountant General to verify the pension proposals and pass orders at an early date. It is stated that the office of the Accountant General returned the pension papers to the Commissioner of Collegiate Education, enclosing a letter dated 19.02.1997, directing them to quote the authority under which the aided service of the petitioner's husband from 29.07.1960 to 01.07.1981 can be treated as qualifying service for pension, when the services of the incumbent were terminated by the aided college i.e. D.N.R. College, Bhimavaram, on 2.07.1981, and further stating that the service rendered from 3.07.1981 to 16.04.1987 was in an unaided college and therefore, the same does not count for pension. Aggrieved by the same, the petitioner has come up with the present writ petition.

3. Learned counsel for the petitioner contended that as the petitioner's husband has rendered the minimum service required under the Pension Rules, he is entitled to the pension, and accordingly, the petitioner is also entitled to the family pension and the non-payment of pension is illegal and without jurisdiction. The learned counsel also contended that even the unaided service rendered by the petitioner has to be counted for the purpose of granting pension, as per various Government Orders. Therefore, the inaction on the part of the respondents authorities is illegal and unsustainable, and therefore, sought for appropriate orders.

4. Counter has been filed on behalf of the respondents disputing and denying the contentions of the petitioner. It is stated in the counter that the petitioner's husband was appointed against an aided vacancy and worked till 1.07.1981, that he was relieved from the service on 2.07.1981 and further his services were terminated by the aided college, and thereafter, he joined in an unaided college and rendered service till the date of his death i.e. till 1987. It is stated that when the management terminated the services of the petitioner's husband, the petitioner is not entitled for any pensionary benefits. In addition, it is stated that as long as the petitioner's husband was alive, he never claimed that he is entitled for any benefit. Further, as the services of the petitioner's husband were terminated, the petitioner's husband is not entitled for any pension and consequently, the petitioner is not entitled for any family pension.

5. Heard the learned counsel for the petitioner and the learned Government Pleader for Higher Education, and considered the material on record.

6. The petitioner filed this Writ Petition claiming pension as well as family pension with reference to the service rendered by her husband as a lecturer in DNR College, Bhimavaram for the period from 29.7.1960 to 2.7.1981, which is stated to be an aided college having held an aided post. It is also the case of the petitioner that the services of the petitioner's husband were terminated after 2.7.1981, and thereafter he joined the 5th respondent College as Principal, which is admittedly an unaided College and rendered service in an unaided post till 16.4.1987 when he died. The grievance of the petitioner is that when the pension papers were forwarded through the 5th respondent college to the 2nd respondent, who in turn forwarded to the 4th respondent, but the 4th respondent returned the papers to the 2nd respondent stating that the petitioner's husband is ineligible for any pension, and consequently the petitioner is also not entitled to any pension or family pension on the ground that the services of the petitioner's husband were terminated, while he was working as a lecturer in DNR College, Bhimavaram. Though learned counsel tried to rely upon the Rules 43 and 50 of the A.P. (Revised) Pension Rules 1980 (hereinafter referred to as 'the Rules') to contend that as the petitioner's husband has rendered more than 20 years of service, which is the minimum service required for eligibility to get pension and further as he died in 1987 while working as a Principal of the 5th respondent College, he is entitled for the pension and consequently, the petitioner is also entitled for family pension. This contention is opposed by the learned Government Pleader. A perusal of Rule 43 shows that an employee is entitled for pensionary benefits on completion of 20 years of qualifying service by the time of retirement. It does not stipulate minimum service of 20 years required to get the benefit of pension. If one retires after rendering 20 years service, he is entitled for the pension. Similarly, Rule 50 deals with family pension, and sub-rule (3) of Rule 50 says where a Government servant dies while in service after having rendered not less than seven years continuous service, the rate of family pension payable to the family shall be equal to the pay last drawn. Therefore, the learned counsel contended that since the petitioner's husband died while in service and has rendered more than seven years of service, the petitioner is entitled for family pension. But, as already noticed, what is referred in sub-rule (3) of Rule 50 is with reference to the Government service. The petitioner by the date of his death was not the Government servant and was not even holding an aided post. The post, which he was holding, and also the College, which he was working, are unaided.

Therefore, the said Rule has no application at all. The learned Government Pleader also brought to the notice of this Court Rule 26 and contended that even in the case of resignation from service, unless the said resignation is properly approved, the service rendered by such employee would be forfeited. Therefore, it is contended by the learned Government Pleader that there is no provision under the Rules under which the petitioner's husband is entitled for pension and the petitioner for family pension.

7. Though at the time of hearing the learned counsel for the petitioner was asked specifically to show any provision under which the petitioner's husband is entitled for pension and the petitioner for family pension, he was unable to show any specific provision, though contended that Rule 43 has to be interpreted in such a way to extend the benefit to the petitioner. As already noticed the said provision cannot be extended to the case of the petitioner's husband, whose services were terminated, though he has rendered 20 years of service by the date of termination of his services. There is no other specific provision under which the petitioner's husband was entitled for pension for his 20 years service in an aided post in an aided college. Though it was not specifically provided, as was referred to in Rule 24, as to the forfeiture of the service on dismissal or removal, an employee would be entitled for pension only when there is a specific provision under the Rules. In the absence of any specific provision, it is not for this Court to extend the benefit of pension by stretching or enlarging any other provision.

8. Under the above circumstances, the claim of the petitioner is devoid of any merit, and therefore, the Writ Petition is dismissed accordingly. No costs.

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S. Ananda Reddy, J.

Dt. 01.10.2004

Pan/Kvh

To

1. The Secretary,

   Education Department,

   Government of A.P.,
   Secretariat Buildings, Hyderabad.
2. Commissioner of Collegiate Education,
   A.P Hyderabad.
3. Regional Joint Director for Higher Education,
   Rajahmundry, East Godavari District.
4. Account General (A&E) A.P, Hyderabad-500463.
5. Two C.Cs to Govt.Pleader for Higher Education,

   High Court buildings, Hyderabad (OUT)

6. Two C.D.copies